

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

OP.No. 15005 of 2002(J)

PETITIONER:

**DR.C.M.KUNHIMOOSA,
CEEYEN HOSPITAL,
BADAGARA,
KOZHIKODE DISTRICT.**

**BY ADV. SRL.C.KHALID
SRL.N.GOPINATHA PANICKER
SRL.P.VISWAMBARAN
SRL.R.O.MUHAMED SHEMEEM
SRL.T.P.SAJID (THALASSERY)**

RESPONDENTS:

- 1. THE TAHSILDAR, BADAGARA TALUK,BADAGARA.**
- 2. THE REVENUE DIVISIONAL OFFICER,KOZHIKODE**
- 3. THE DISTRICT COLLECTOR,KOZHIKODE.**
- 4. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY (TAXES), SECRETARIAT,
THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRL.TEKCHAND.V.

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP.NO.25339 OF 2002 IN OP.NO.15005 OF 2002-J.

DISMISSED.

02-11-2007.

Sd/- T.R.Ramachandran Nair, Judge.

APPENDIX

Petitioner's Exhibits:-

- Ext.P1:** Copy of the judgment dtd.13-2-1996 in OP.No.3924/94-P of this Hon'ble Court.
- Ext.P2:** Copy of the order No.D3.7703/96 in Form No.VI dtd.14.8.96 of the 1st respondent.
- Ext.P3:** Copy of the receipt No.44 dtd.23.9.96 issued by the Village Officer, Badagara.
- Ext.P3(a):** Copy of the receipt No.30 dtd.3.2.97 issued by the Village Officer, Badagara.
- Ext.P3b):** Copy of the receipt No.59 dtd.29.3.97 issued by the Village Officer, Badagara.
- Ext.P3(c):-** Copy of the receipt No.40 dtd.3.7.97 issued by the Village Officer, Badagara.
- Ext.P4:-** Copy of the order No.KI-4194/2001 (8205) dtd.30-6-01 of the 1st respondent.
- Ext.P5:-** Copy of Reply submitted by the petitioner before the 1st respondent.
- Ext.P6:-** Copy of Appeal submitted by the petitioner before the 2nd respondent.
- Ext.P7:-** Copy of communication letter No.C1.1377/2002 dtd.12.4.2002 issued by the 2nd respondent.

Respondents' Exhibits:- Nil.

(true copy)

P.A. TO JUDGE.

kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.15005 of 2002-J.

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Dated this the 2nd day of November, 2007.

J U D G M E N T

The petitioner herein seeks to quash Exts.P4 and P7 whereby the authority has sought to revise the building tax after the lapse of four years of the date of the original order of assessment.

2. The short facts leading to the Original Petition are the following:

The petitioner had constructed a double storied building in Survey No.75/1C in Vatakara Village in Vatakara Taluk in Kannur District. As per Ext.P2 order tax was assessed at Rs.1,65,600/-, in which the petitioner was directed to remit it in four instalments. The petitioner remitted the amount as is evidenced from Exts.P3(a) to P3(d). The date of Ext.P2 is 14/8/1996. Nearly Four years thereafter he received Ext.P4 notice dated 30/6/2001 calling upon him to remit a further amount of Rs.81,000/- towards balance tax due. A reading of Ext.P4 shows that the Tahsildar has reopened the same based on a

Government notification dated 22/11/1996. The petitioner submitted a representation Ext.P5 objecting to the same. Thereafter he filed Ext.P6 appeal which was rejected as per Ext.P7.

3. The learned counsel for the petitioner, by relying on Ext.P1 judgment of this Court in OP.No.3924/1994, contended that the reassessment made by the assessing authority is clearly without jurisdiction. It is submitted that once the assessment is completed the authority passing the order becomes functus officio and unless there is a specific provision in the statute it cannot be reopened.

4. In Ext.P1 judgment the question was considered in the light of the decision of this Court reported in *Yousef v. State of Kerala* (1993 (2) KLT 59) which was affirmed by a Division Bench in *Kurien George v. Tahsildar* (1995(2) KLT 457). It was held in the above decisions that the Act nowhere provides for the reopening of an order of assessment and to substitute it with a fresh order on a different basis and that ordinarily the authority passing the order becomes functus officio once the assessment is completed, unless the statute in question confers him with further power either to reopen it or to rectify any mistake in it. In fact, herein the assessment was reopened not because of any mistake in

the original assessment. What is attempted is a revision of the tax liability based on a notification issued by the Government after the assessment order was passed. The same is after a lapse of nearly five years.

5. In the light of the principles laid down by this Court in the above decisions, Ext.P4 which is confirmed by Ext.P7 is clearly illegal and without jurisdiction. Hence I quash Exts.P4 and P7. Therefore, the writ petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-